

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

BOBBY EUGENE MITCHELL,	]	
	]	
Movant,	]	
	]	
vs.	]	CV-08-LSC-RRA-8052-S
	]	CR-07-LSC-RRA-0354-S
	]	
	]	
UNITED STATES OF AMERICA,	]	
	]	
Respondent.	]	

**MEMORANDUM OPINION**

The magistrate judge entered a report and recommendation recommending that:

1. the § 2255 Motion to Vacate be GRANTED to the extent that Mitchell is entitled to an out-of-time appeal;<sup>1</sup>
2. the judgment in Mitchell's criminal case, CR-07-LSC-RRA-0354-S, entered on April 30, 2008, be VACATED, and that an identical judgment be entered;
3. Mitchell be allowed to appeal to the extent permitted by the plea agreement; and
4. counsel be appointed to represent Mitchell on appeal.

No objections have been filed. The court has considered the entire file in this action, together with the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved.

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<sup>1</sup> A petitioner's "successful motion to file an out-of-time notice of appeal is not to be counted as a first petition for the purposes of subsequent collateral proceedings." *McIver v. United States*, 307 F.3d 1327, 1332 (11th Cir. 2002). Therefore, the court need not reach the other grounds advanced in the petitioner's motion to vacate.

Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court. The motion to vacate is due to be GRANTED. An appropriate order will be entered.

Done this 21st day of June 2010.



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L. SCOTT COOGLER  
UNITED STATES DISTRICT JUDGE  
153671